

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
JEANNE MARIE RIPPE ) CASE NO. 12-10220  
 )  
 )  
Debtor )

**DECISION ON CONFIRMATION**

At Fort Wayne, Indiana, on September 25, 2013

This case is a fight between former spouses and, as is often true in such litigation, it combines the pain and suspicion of a broken marriage with the anger and frustration of a creditor that is not receiving its due. The matter is before the court following trial of the issues raised by confirmation of the debtor’s proposed chapter 13 plan and the objection thereto filed by the debtor’s ex-husband – Daniel Rippe. The only objection is that the plan has not been filed in good faith. See 11 U.S.C. §1325(a)(3). Debtor bears the burden of proving that it is. Matter of Jones, 119 B.R. 996, 998 (Bankr. N.D. Ind. 1990).

Whether or not a proposed plan has been filed in good faith is determined by the “totality of the circumstances” and is a matter committed to the court’s discretion. Matter of Love, 957 F.2d 1350, 1355-56 (7th Cir. 1992). It is a flexible analysis that lets the court consider any number of relevant factors in order to determine the debtor’s good faith or lack thereof, including: the debtor’s pre-petition conduct, nature of the debt, timing of the petition, debtor’s motive, the effect of the debtor’s actions on creditors, debtor’s post-petition actions, how the debt arose, and the forthrightness of the debtor with the court and creditors. Love, 957 F.2d at 1357. The court is to marshal and evaluate all of the different factors that may warrant consideration in an effort to

determine whether debtor's use of Chapter 13 is proper. Not all factors will be present in every case and no one factor can ever be determinative. Instead, it is the cumulative effect of all relevant factors which leads to a finding of good faith. The court must determine whether or not a proposed plan represents a sincerely intended repayment of pre-petition debt consistent with the debtor's available resources, or is, instead, an abuse of the provisions, purpose, or spirit of Chapter 13. Matter of Smith, 848 F.2d 813, 818 (7th Cir. 1988); In re Rimgale, 669 F.2d 426, 431 (7th Cir. 1982); Matter of Belt, 106 B.R. 553, 564 (Bankr. N.D. Ind. 1989). See also, In re LaMaire, 898 F.2d 1346, 1349 (8th Cir. 1990). In the ultimate analysis, the court asks if the debtor "is really trying to pay the creditors to the reasonable limit of his ability or is he trying to thwart them?" Smith, 286 F.3d at 466 (quoting In re Schaitz, 913 F.2d 452, 453 (7th Cir. 1990)). See also, Jones, 119 B.R. at 1002.

The debtor's obligation to her former husband arises out of the parties' mediated marital property settlement agreement, by which they agreed to divide their property between them. The debtor received the home and surrounding acreage, with the proviso that she refinance the mortgage and have Mr. Rippe removed as co-obligor. She also received a number of rental properties and, as with the marital home, was required to refinance or obtain Mr. Rippe's release as an obligated party on a line of credit secured by a mortgage on one of them - 2526/28 Webster Street. If she did not obtain those releases by November 30, 2011, all the real estate she received was to be immediately listed for sale.<sup>1</sup>

Problems arose soon after the parties' agreement was approved by the state court. Both parties filed motions and counter motions for contempt and various sanctions. These resulted in the

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<sup>1</sup>If, by November 30, the debtor obtained a commitment to refinance the mortgages which would result in Mr. Rippe's release, she had until December 30, 2011 to close the transaction.

debtor being found in contempt of court, ordered to pay tens of thousands of dollars in sanctions and attorney fees, and being removed from control of the rental properties she had received. On November 30, 2011 her attorney filed a notice of refinancing/sale of real estate, representing the conditions which extended the debtor's deadline for listing the properties for sale had been satisfied; but this transaction never closed and there is every reason to believe it was not a bona fide arrangement. Ultimately, on February 6, 2012, with yet another contempt citation scheduled to be heard that day, the debtor filed a petition for relief under Chapter 13, transferring the parties' dispute to this court.

As currently proposed, the debtor's chapter 13 plan says that all creditors, including Mr. Rippe, will be paid in full. It provides that the debtor will cure any pre-petition arrearage on the home mortgage and maintain the regular monthly payments. She is also to take steps to refinance or modify the mortgage debt on both the home and the Webster Street property and if, after two years, she is unable to do so, she will promptly list the home and rental properties for sale. In some ways, some might think that Mr. Rippe would be better off if the plan is confirmed, and so they might wonder why he objects to confirmation so strenuously.<sup>2</sup> The explanation may be that he simply does not believe she will fulfill her obligations under the plan and, some years down the road, he will find himself in the same position he is now. Given the debtor's conduct prior to filing and her absolute right to dismiss this case, 11 U.S.C. § 1307(b), that fear would be understandable.

Considering the various factors that bear on the issue leads the court to the conclusion that the proposed plan has not been filed in good faith. Admittedly, not all the relevant factors point in

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<sup>2</sup>The debtor actually makes this argument in its reply to the creditor's initial brief. See, Debtor's reply brief, filed July 23, 2013, p.5. The court will leave it to the objector to determine where his best interests lie.

that direction. Nonetheless, when all the pieces of the puzzle are brought together, the court is presented with a picture lacking the good faith needed to approve what debtor proposes. She is not paying creditors to the best of her ability, she is trying to thwart them, particularly Mr. Rippe.

One factor that does suggest good faith is that the plan proposes to pay all creditors, including Mr. Rippe, in full and it appears to be structured in such a way that it might actually do so. Nonetheless, full payment is not, by itself, sufficient to warrant the conclusion that a plan has been filed in good faith. If it were, § 1325(a)(3) would contain an exception for full payment plans, in much the same way that § 1325(b) does for plans in which the debtor pays less than all of its disposable income to unsecured creditors.

As for the nature of the debt to the objector, it is non-dischargeable in chapter 7, but dischargeable in chapter 13. Compare 11 U.S.C. § 523(a)(15) with 11 U.S.C. § 1328(a)(2). It arises out of the marital property settlement agreement that both parties – having the advice of counsel – agreed to only a few months prior to the petition. The agreement not only divided the parties’ property between them, it also contained relatively short deadlines by which certain things were to be done and put mechanisms in place to deal with the possibility that those deadlines might not be met. Yet, since entering into it, the debtor has done much less than her level best to fulfill her obligations under it. She did not make a serious effort to refinance the properties, and after the time passed for doing so, did not list them for sale, immediately or otherwise. While she did file a notice of sale with the state court, in an apparent attempt to obtain more time, that sale not only never closed, it appears to be something less than a bona fide transaction.

The timing of the debtor’s chapter 13 petition is also a relevant inquiry. While there may be no good time to file bankruptcy, Belt, 106 B.R. at 568, the timing of the debtor’s petition in this case

has all the hallmarks of a lack of good faith. See, In re Tippett, 2008 WL 2020348 (Bankr. E.D. N.C. 2008). It was filed on February 6, 2012, the same day the debtor was scheduled to appear before the state court for yet another inquiry as to whether she should be held in contempt. By filing the petition when she did, the automatic stay allowed her to avoid that court's scrutiny and possible finding of contempt (it also prevented the state court from having the opportunity to exonerate her from the charge).

The events in state court cast light on debtor's motive in filing this proceeding. It appears that was, quite simply, to undo much of what the state court had done with regard to enforcing the parties' settlement agreement, avoid its further scrutiny, and obtain more time – time the state court was either unwilling or unable to give her – so that she could continue to drag out her performance under that agreement.<sup>3</sup>

Her post-petition actions are also relevant. They are, at the very least, suspicious. Although the debtor purports to have entered into an agreement to sell all of her assets, including the house, farm, and rental properties, to Orange Solutions LLC, and filed a motion to approve such a sale, that agreement is suspect. It seems to be the same questionable one she advised the state court about, but could not close. The copy of the agreement she filed with this court when she sought approval of

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<sup>3</sup>With all of the filings and counter filings made in state court, it strikes this court as somewhat odd that the one thing which was not filed was a formal request for an extension of time to comply with debtor's obligations under the property settlement agreement. There is a suggestion, see, Post Trial Brief of Daniel Rippe, filed July 23, 2013, p. 2, that Indiana law prohibits such a change in the agreement. The court need not decide. Nonetheless, for the debtor to turn to this court to obtain relief the state court either would not or could not give, see, Debtor's Post Trial Brief, filed July 8, 2013, p. 7 (“By using the bankruptcy process, the debtor is not trying to change her obligations under the MSA, but merely to have additional time to complete those obligations”), would make the situation even more problematic. Cf. 11 U.S.C. § 1325(a)(3) (plan may not be “by any means forbidden by law.”).

the sale is incomplete. A page is missing that includes additional provisions giving the debtor the opportunity to buy back property, receive a fee for her continued management of the rental properties, and buy out the other members of the limited liability company/purchaser. Whether the presence of those provisions in the agreement would have mattered to the court, creditors and the trustee in their evaluation of it is not the issue.<sup>4</sup> Rather, it is debtor's failure to be forthright in a proceeding that depends upon and expects honest and complete disclosure that casts a pall on things.

As to the debtor's forthrightness, she was not a credible witness. To the contrary, she was "flippant and slippery" and, throughout the course of the trial, provided answers to questions that, upon further probing, proved to be less than accurate.

Considering the cumulative effect of the factors that bear upon the issue, the court is not able to find that the debtor's currently proposed chapter 13 plan has been filed in good faith, as required by 11 U.S.C. § 1325(a)(3). Confirmation will therefore be denied. An order doing so will be entered.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court

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<sup>4</sup>The court never ruled upon the motion because it was withdrawn at the initial hearing on the motion and the objections to it. See, Docket Entry # 71, May 3, 2012.